

1 August 1985

NOTE FOR:
CIA Member, SECOM

wanted you to have a copy
of the attached legislative proposal to provide
federal agencies access to criminal history
records. This is for information only.

Executive Secretary

Attachment : draft amendment to Intelligence
Authorization Act and report language

Copy to: Chairman, SECOM Personnel
Security Subcommittee (w/att)

Sanitized Copy Approved for Release 2011/08/18 : CIA-RDP96M01138R000400070007-1

Page Denied

Next 1 Page(s) In Document Denied

REPORT LANGUAGE
ACCESS TO CRIMINAL HISTORY RECORDS FOR NATIONAL SECURITY PURPOSES

The Committee has had a longstanding concern about the adequacy of security practices in the government. The recent arrest and indictment of several members and ex-members of the United States Armed Forces on espionage charges draws attention to the urgent need to address inadequate security practices of the government.

The Permanent Subcommittee on Investigations of the Committee on Governmental Affairs held an extensive set of hearings into the question of the procedures and practices for granting security clearances by the government. The Manpower and Personnel Subcommittee of the Armed Services Committee has also begun a series of hearings on this subject. To date, those hearings have disclosed a number of glaring shortcomings.

One of the principle shortcomings discovered by this Committee and the Permanent Subcommittee on Investigations was that state and local governments frequently did not make available criminal history records to federal agencies who are conducting investigations of individuals who are under consideration for security clearances. As a result, a person might be given a security clearance without the knowledge that he or she was a convicted felon. Obviously, this poses a grave risk that unreliable persons will be granted access to highly classified information. Accordingly, one of the recommendations made by the Permanent Subcommittee on Investigations is that a federal law be enacted which requires state and local governments to provide criminal history records to authorized federal officials conducting background investigations of individuals who are under consideration for security clearances.

Department of Defense witnesses raised this with the committee in hearings on June 26 and urged that corrective legislation be adopted. The CIA has indicated to the Committee that they support this legislation.

For many years, local jurisdictions were quite forthcoming in making this information available to federal investigators from the Defense Investigative Service (DIS), the Office of Personnel Management (OPM) and the Central Intelligence Agency (CIA).

However, in recent years a disturbing trend has developed. Local and State jurisdictions in increasing numbers are denying DIS, OPM and CIA agents access to criminal history records or permitting access to records of convictions only -- not records of arrests. Other jurisdictions are severely limiting the number of requests that can be made or delaying the process of these requests for a considerable period of time. Some jurisdictions are now charging fees for these records. The net result is that

this important source of information is being seriously curtailed in many localities throughout the country.

For example, almost all of California refuses to cooperate with OPM and only provides DIS with conviction records. In Florida, twenty-six cities, including Miami, do not respond to requests by OPM for criminal history record information (CHRI). The Metropolitan Police Department in the District of Columbia refuses to give any information beyond conviction data to either DIS or OPM.

This situation has far reaching and dangerous implications. Currently, the United States Government is unable to obtain State and local criminal records on applicants for some of the most sensitive positions in the military and other government agencies that are entrusted with our nation's national security. The Permanent Subcommittee on Investigations recent hearings showed the serious nature of espionage as seen in the Christopher Boyce case at TRW, the William Holden Bell case at Hughes and the James Harper case at Systems Control Technology.

To correct this problem, the committee adopted an amendment which authorizes the federal government to obtain access to local criminal justice records when conducting eligibility investigations for (1) access to classified information, (2) assignment to or retention in sensitive national security duties, or (3) acceptance or retention in the armed services. Such a request is only permitted if the person under investigation consents to it in writing. Moreover, the criminal history record information obtained pursuant to this request would be afforded the same protections as provided by the Privacy Act.

This inability to review criminal record histories is causing severe delays in clearing employees for Federal work and contracts. In addition, it is impairing the government's ability to evaluate the overall suitability of an individual for a sensitive position and, thus, decreasing the Government's ability to meet its obligations for maintaining and safeguarding classified information. Not surprisingly, hostile intelligence services are not overly intimidated by a government personnel security program like this where the proverbial left-hand of the government does not know or is not allowed to know what the right-hand does.

99th Congress
1st Session

6/26 (#1)

Amendment to Intelligence Authorization Act

To provide access to criminal history record information for
national security purposes for the Department of Defense,
the Office of Personnel Management, and the Central Intelligence Agency

IN THE SENATE OF THE UNITED STATES

CONGRESSIONAL FINDINGS AND POLICIES

Sec. 1. The Congress finds --

(1) that under the Constitution, Congress has the responsibility and power to provide for the common defense and security of our Nation;

(2) that the interests of national security require that the Department of Defense, the Office of Personnel Management or the Central Intelligence Agency conduct investigations of individuals for the purpose of determining eligibility for access to classified information, assignment to or retention in sensitive national security duties, or acceptance or retention in the armed services;

(3) that the interests of national security require that the Department of Defense, the Office of Personnel Management or the Central Intelligence Agency have access to criminal history record information when conducting investigations of individuals for the purpose of determining eligibility for access to classified information, assignment to or retention in sensitive national security duties, or acceptance or retention in the armed services; and

(4) that the interests of national security have been adversely affected by the reluctance and refusal of some state and local criminal justice agencies to provide criminal history record information to the Department of Defense, the Office of Personnel Management or the Central Intelligence Agency for use in investigations of individuals for the purpose of determining eligibility for access to classified information, assignment to or retention in sensitive national security duties, or acceptance or retention in the armed services.

- 2 -

Sec. 2. Chapter 31 of Title 10, United States Code, is amended by striking out section 520a and substituting the following:

"Section 520a. CRIMINAL HISTORY RECORD INFORMATION FOR NATIONAL
SECURITY PURPOSES

"(a) As used in this chapter:

"(1) The term "criminal justice agency" includes federal, state, and local agencies and means: (A) courts or (B) government agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or Executive Order, and which allocates a substantial part of its annual budget to the administration of criminal justice.

"(2) The term "criminal history record information" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, information, or other formal criminal charges, and any disposition arising therefrom, sentencing, correction supervision, and release. The term does not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system. The term does not include those records sealed pursuant to a lawful order of a court of law.

"(3) The term "classified information" means information or material designated pursuant to the provisions of a statute or Executive Order as requiring protection against unauthorized disclosure for reasons of national security.

"(4) The term "state" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of Pacific Islands, and any other territory or possession of the United States.

"(5) The term "local" and "locality" means any local government authority or agency or component thereof within a State having jurisdiction over matters at a county, municipal or other local government level.

"(b)(1) Upon request by the Department of Defense, the Office of Personnel Management or the Central Intelligence Agency, criminal justice agencies shall make available criminal history record information regarding individuals under investigation by the Department of Defense, the Office of Personnel Management or the Central Intelligence Agency for the purpose of determining eligibility for (A) access to classified information,

- 3 -

(B) assignment to or retention in sensitive national security duties, or
(C) acceptance or retention in the armed services. Fees charged for providing criminal history record information pursuant to this subsection shall not exceed those charged to other criminal justice agencies for such information.

"(2) This subsection shall apply notwithstanding any other provision of law or regulation of any State or of any locality within a State, or any other law of the United States.

"(c) The Department of Defense, the Office of Personnel Management or the Central Intelligence Agency shall not obtain criminal history record information pursuant to this section unless it has received written consent from the individual under investigation for the release of such information for one or more of the purposes set forth in subsection (b).

"(d) Criminal history record information received under this section shall not be disclosed except for the purposes set forth in subsection (b) or as provided by section 552a of Title 5, United States Code."

Sec. 3. The amendments made shall become effective with respect to any inquiry which begins after the date of enactment of this Act conducted by the Department of Defense, the Office of Personnel Management or the Central Intelligence Agency for any of the purposes specified in subsection (b) of section 520a of Title 10, United States Code, as added by this Act.

Sec. 4. These amendments are made pursuant to the powers vested in Congress as found in Section 8 of Article I of the United States Constitution.